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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

STATE OF MISSOURI EX REL. LACLEDE GAS LIGHT COMPANY,
Plaintiff in Error.

vs.

M. J. MURPHY, STREET COMMISSIONER, AND THE CITY OF ST. LOUIS,
Defendants in Error.

667

MOTION OF DEFENDANTS IN ERROR TO ADVANCE CAUSE.

W. C. MARSHALL,
Attorney for Defendants in Error.

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M. J. MURPHY, STREET COMMISSIONER, AND THE CITY OF ST. LOUIS,
Defendants in Error.

MOTION OF DEFENDANTS IN ERROR TO ADVANCE CAUSE.

The above named defendants in error respectfully move this Honorable Court to advance this cause, and set the same for hearing at as early a day as the convenience of the court will permit, and defendants in error here show unto the court, as special reasons for this motion, as follows:

FIRST: The general nature of this litigation is this: The plaintiff in error seeks, by *mandamus*, to compel the defendants in error, to permit it to lay down and construct conduits in any and all of the streets of the City of St. Louis, it may so elect,

without first submitting plans and specifications showing the route and the manner of construction, insulation, etc., to the Board of Public Improvements, and getting the sanction of said Board, before the work is commenced, as the ordinances of the City of St. Louis require all persons to do.

Plaintiff in error claims that it is not bound, by the provisions of the city ordinances in this regard, because, under the Act of March 3d, 1857, incorporating the Laclede Gas Light Company, and the act amendatory thereof, approved March 26th, 1868, it acquired from the State of Missouri a right so to construct conduits and string wires therein, which antedates and is paramount to the ordinance provisions of the City of St. Louis, and that the city ordinance therefore impairs the obligation of its contract with the State, and hence is void under Section 10 Art. I of the Constitution of the United States.

Defendants in error claim that the ordinance is a legitimate exercise of the police power conferred on the city by the State of Missouri, and that it in no wise impairs the contract between the State of Missouri and plaintiff in error, as contained in the several acts of incorporation of said company.

Defendants in error further claim that the charter of plaintiff in error has expired by limitation, and that plaintiff in error, therefore, is not entitled to further carry on any business.

The City of St. Louis has, by ordinance, created a Board of Subway Commissioners, who have been at work for more than two years trying to solve the problem of the removal of wires from above the

surface of the streets, and to cause them to be placed in conduits. This has become an absolute necessity for the protection of life and property in this city.

Among the problems presented to said commissioners, is first, whether the city should construct one conduit, large enough to accommodate all the wires of all the companies, telegraph, telephone, electric light, etc., now using the streets of the city, or, second, whether the city will permit some third person to construct such a conduit and to lease out space to all wire-using companies, or third, whether it will grant to each company permission to construct its own conduit.

Plaintiff in error claims the right to construct conduits wherever, and in whatever part of the streets of the city it chooses.

No definite conclusion can be reached by the city until this alleged right of plaintiff in error has been adjudicated by this Honorable Court. The decision of plaintiff's claim will enable the city to determine which of the three courses, above indicated, will be adopted, but as long as the claim of plaintiff in error remains undecided, the city can do nothing. Especially in the business districts of the city, where the buildings are very tall, and consequently fires are more difficult to control, the streets of the City of St. Louis are now covered by a network of wires and cables, amounting, on some streets, to hundreds and even thousands. This condition makes it dangerous to property and also to pedestrians passing along the streets, and this danger is daily increasing, and makes the burying

of these wires absolutely necessary. Until a decision is reached in this case, no definite action can be taken by the city on this subject.

Therefore, defendants in error earnestly pray this Honorable Court to grant this motion, and to set this cause for hearing at as early a day as possible.

Respectfully submitted,

W. C. MARSHALL,

Attorney for Defendants in Error.